
UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

FRANCISCO JAVIER RIVERA,

Plaintiff,

*versus*KEVIN SMITH, *et al.*

Defendants.

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CIVIL ACTION NO. 1:21-CV-382

**ORDER OVERRULING PLAINTIFF'S OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Plaintiff Francisco Javier Rivera, a prisoner previously confined at the Stiles Unit of the Texas Department of Criminal Justice, Correctional Institutions Division (TDCJ-CID), proceeding *pro se* and *in forma pauperis*, filed this civil rights action pursuant to 42 U.S.C. § 1983 against Kevin Smith, Lorie Davis, and Rochelle Rogers.

The court referred this matter to the Honorable Christine L. Stetson, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge. Defendants filed a Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b). The magistrate judge recommends denying the motion with respect to the medical claims against Defendants Smith and Rogers and granting the motion with respect to the remaining issues.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings, and all available evidence. Plaintiff filed objections to the magistrate judge's Report and Recommendation.

The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). Plaintiff's objections fail to identify any errors in the report and recommendation. Plaintiff has not shown that Defendant Davis, the former Director of the Correctional Institutions Division, was personally involved in violating Plaintiff's constitutional rights or that she is liable in her supervisory capacity. In addition, Plaintiff has not alleged any facts from which the court could conclude that Defendant Rogers was deliberately indifferent to Plaintiff's safety when she temporarily housed Plaintiff in protective custody in the same administrative segregation building as another inmate who posed a risk to Plaintiff. After careful consideration, the court concludes that the objections are without merit.

ORDER

Accordingly, Plaintiff's objections (#54) are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge (#53) are **ADOPTED**. Defendants' Motion to Dismiss (#41) is **DENIED** with respect to the medical claims against Defendants Smith and Rogers. In all other respects, the Motion is **GRANTED**. Defendant Lorie Davis is **DISMISSED** from this action.

SIGNED at Beaumont, Texas, this 13th day of September, 2023.



MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE